STATE OF NEW YORK

6914

2023-2024 Regular Sessions

IN SENATE

May 15, 2023

Introduced by Sen. RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to residential health care facility rates

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraphs (a), (b), (c) and (d) of subdivision 2-c of section 2808 of the public health law, paragraphs (a), (b) and (c) as added by section 95 of part H of chapter 59 of the laws of 2011, paragraph (d) as amended by section 2 of part M of chapter 57 of the laws of 2022, are amended and new paragraph (b-1) is added to read as follows:

(a) Notwithstanding any inconsistent provision of this section or any other contrary provision of law and subject to the availability of federal financial participation, the non-capital component of rates of payment by governmental agencies for inpatient services provided by residential health care facilities on or after October first, two thousand eleven, but no later than January first, two thousand twelve, shall reflect a direct statewide price component, and indirect statewide price component, and a facility specific non-comparable component, utilizing allowable operating costs for a base year as determined by the commissioner by regulation. Such rate components shall be periodically updated to reflect changes in operating costs**, provided however that such rate components shall be updated no later than January first, two thousand twenty-five and no less than every five years thereafter, using the most currently available cost report data, which updates shall include but not be limited to an update of rate components to reflect actual base year costs**.

(b) The direct and indirect statewide price components shall be adjusted by a wage equalization factor and such other factors as determined to be appropriate to recognize legitimate cost differentials and the direct statewide price component shall be subject to a case mix

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD10005-03-3

adjustment utilizing the patients that are eligible for medical assistance pursuant to title eleven of article five of the social services law. Such wage equalization factor **and other factors** shall be periodically updated to reflect current labor market **and other** conditions**, provided however that such updates shall be implemented no later than January first, two thousand twenty-five, and no less than every five years thereafter, based on the most currently available cost report data**.

(b-1) For purposes of the updates required by paragraphs (a) and (b) of this subdivision and associated changes in the rate-setting methodology, the department shall establish and consult with a technical assistance workgroup that includes external experts with professional expertise in nursing home rate setting.

(c) The non-capital component of the rates for: (i) AIDS facilities or discrete AIDS units within facilities; (ii) discrete units for residents receiving care in a long-term inpatient rehabilitation program for traumatic brain injured persons; (iii) discrete units providing specialized programs for residents requiring behavioral interventions; (iv) discrete units for long-term ventilator dependent residents; and (v) facilities or discrete units within facilities that provide extensive nursing, medical, psychological and counseling support services solely to children shall reflect the rates in effect for such facilities on January first, two thousand nine, as adjusted for inflation and rate appeals in accordance with applicable statutes, provided, however, that such rates for facilities described in subparagraph (i) of this paragraph shall reflect the application of the provisions of section twelve of part D of chapter fifty-eight of the laws of two thousand nine, and provided further, however, that insofar as such rates reflect trend adjustments for trend factors attributable to the two thousand eight and two thousand nine calendar years the aggregate amount of such trend factor adjustments shall be subject to the provisions of section two of part D of chapter fifty-eight of the laws of two thousand nine, as amended. **Notwithstanding the elimination of a trend factor from rates of payment paid to other residential health care facilities or any other inconsistent provision of law, commencing on and after January first, two thousand twenty-five, the non-capital component of rates established pursuant to this paragraph shall be adjusted for inflation.**

(d) The commissioner shall promulgate regulations, and may promulgate emergency regulations, to implement the provisions of this subdivision**, including regulations to implement the updates to the rate components and associated changes in the methodology as set forth in paragraphs (a) and (b) of this subdivision**. Such regulations shall be developed in consultation with the nursing home industry and advocates for residential health care facility residents and, further, the commissioner shall provide notification concerning such regulations to the chairs of the senate and assembly health committees, the chair of the senate finance committee and the chair of the assembly ways and means committee. Such regulations shall include provisions for rate adjustments or payment enhancements to facilitate a minimum four-year transition of facilities to the rate-setting methodology established by this subdivision and may also include, but not be limited to, provisions for facilitating quality improvements in residential health care facilities**, provided however that regulations governing the updates set forth in paragraphs (a) and (b) of this subdivision and associated changes in the methodology may include a transition period as determined by the commissioner in consultation with the stakeholders described in this paragraph and the work-**

group set forth in paragraph (b-1) of this subdivision. For purposes of facilitating quality improvements through the establishment of a nursing home quality pool to be funded at the discretion of the commissioner by (i) adjustments in medical assistance rates, (ii) funds made available through state appropriations, or (iii) a combination thereof, those facilities that contribute to the quality pool, but are deemed ineligible for quality pool payments due exclusively to a specific case of employee misconduct, shall nevertheless be eligible for a quality pool payment if the facility properly reported the incident, did not receive a survey citation from the commissioner or the Centers for Medicare and Medicaid Services establishing the facility's culpability with regard to such misconduct and, but for the specific case of employee misconduct, the facility would have otherwise received a quality pool payment. Regulations pertaining to the facilitation of quality improvement may be made effective for periods on and after January first, two thousand thirteen.

§ 2. This act shall take effect immediately.